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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DEON LEE MENEFEЕ,

Defendant and Appellant.

B225518

(Los Angeles County  
Super. Ct. No. GA075882)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Candace J. Beason, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant  
and Appellant.

No appearance for Plaintiff and Respondent.

Deon Lee Menefee appeals from the judgment entered following his plea of no contest to possession of marijuana for sale, during the commission of which a principal was armed with a firearm (Health & Saf. Code, § 11359; Pen. Code, § 12022, subd. (a)(1)), possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)), the unlawful possession of ammunition (Pen. Code, § 12316, subd. (b)(1)) and receiving stolen property (Pen. Code, § 496, subd. (a)). The trial court sentenced Menefee to six years in prison, suspended imposition of the sentence and granted Menefee three years of formal probation. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *1. Facts.*<sup>1</sup>

On January 20, 2009, Pasadena Police Detective Kevin Jackson was working the “special investigations unit.” At approximately 10:00 o’clock that evening, Jackson, pursuant to a search warrant, conducted a search of Menefee’s home at 565 West Hammond Street in Pasadena. A number of items were recovered from the detached garage as well as the main portion of the house and Menefee’s bedroom. These items included a stolen .22 caliber revolver,<sup>2</sup> four baggies containing a total of 13.9 grams of marijuana, 18.57 grams of “white powdery cocaine,” approximately 18.5 grams of rock cocaine, a “quantity” of a white, powdery substance which the detective believed was

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<sup>1</sup> The facts have been taken from the transcript of the preliminary hearing.

<sup>2</sup> Although Menefee told the detective that the gun belonged to a friend, a Mr. Willoughby, after the search was conducted it was determined that the gun had been stolen from the home of a man in California City.

used as a cutting agent for cocaine, .22 caliber and nine-millimeter bullets, electronic weight scales, a hot plate and small plastic baggies.

Due to the quantity of cocaine, the way in which it was packaged, the presence of scales and the substance commonly used as a cutting agent, the presence of “numerous items [such as a razor, a pie tin, a spatula and a spoon] that contained residue,” and the presence of a hot plate, which is used for changing cocaine from a powder to a “solid base,” Detective Jackson was of the opinion Menefee possessed the narcotic for the purpose of sale. With regard to the marijuana, Jackson concluded that it, too, was possessed for sale. He based his opinion on the amount of the drug and the way in which it was packaged.

## *2. Procedural history.*

On January 13, 2009, a search warrant was issued which allowed Detective Jackson and other police officers to search Menefee’s home, garage, car and other property. Based on what was found during execution of the warrant, a preliminary hearing was held on July 14, 2009.

On July 29, 2009 Menefee was charged by information with the possession for sale of cocaine base (Health & Saf. Code, § 11351.5), during which he was personally armed with a firearm (Pen. Code, § 12022, subd. (c)) (count 1); possession of marijuana for sale (Health & Saf. Code, § 11359), during which a principal was armed with a firearm (Pen.Code, § 12022, subd. (a)(1)) (count 2); possession of a firearm by a felon

(Pen. Code, § 12021, subd. (a)(1))<sup>3</sup> (count 3); the unlawful possession of ammunition (Pen. Code, § 12316, subd. (b)(1)) (count 4); and receiving stolen property, a handgun (Pen. Code, § 496, subd. (a)) (count 5). It was further alleged as to counts 1 and 2 that Menefee previously had been convicted of possession of cocaine base for sale (Health & Saf. Code, § 11351.5), within the meaning of Health and Safety Code section 11370, subdivisions (a) and (c). It was also alleged as to count 1 that Menefee had previously been convicted of possession of cocaine base for sale (Health & Saf. Code, § 11351.5), within the meaning of Health and Safety Code section 11370.2, subdivision (a). Menefee entered a plea of not guilty to each of the five counts.

On March 5, 2010, Menefee filed in the trial court a motion to quash the search warrant and suppress all evidence seized pursuant to the warrant on the ground that the “affidavit [on which issuance of the warrant had been based] failed to establish probable cause.” Menefee also moved “for disclosure of detailed information regarding the confidential informant” who made the affidavit.

At a hearing held on March 10, 2010, counsel for Menefee asserted that the warrant was defective in that “there [was] sort of a one-liner as to the informant allegedly having a drug transaction with Mr. Menefee, but it [did not] describe the circumstances or anything regarding that alleged transaction.” Counsel continued, “Separate from that, the affidavit discusse[d] two additional people who were pulled over after having left Mr. Menefee’s house and found not [to be] in possession of narcotics. So I think that

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<sup>3</sup> Menefee had previously been convicted of four felonies.

based on the face of it, there's no probable cause from those facts that Mr. Menefee was engaging in illegal activity." Counsel indicated that only one item found in one of the "buyer's" cars, a torn plastic bag behind the driver's seat with a white residue resembling cocaine, was "alerted to" by a canine unit. Other than the dog's reaction, there was "[n]o indication that it was . . . found to be actually cocaine." With regard to the second car to leave Menefee's house, a "canine [again] alerted to the presence of a cocaine odor emitting from the vehicle's interior." However, when an officer searched the car, he "did not locate any contraband." Counsel argued that these two incidents, in which no narcotics were found after the occupants of the vehicles had been in contact with Menefee could not be relied upon for probable cause to search Menefee's home, garage and cars. Counsel indicated that, should the trial court rule against her, "the court should go in-camera and review the additional facts [contained in the affidavit] to see if the warrant [did] contain additional facts lending [themselves] to [show] probable cause, which [was] not contained thus far in the affidavit."

The prosecutor argued that the affidavit in support of the search warrant provided probable cause. The prosecutor did not "necessarily disagree too much with [defense counsel's] summary of the facts," but disagreed with her conclusion. He indicated that when "you have a car drive to meet" an individual, then observe some "interaction" between the individuals, then find what appears to be cocaine in the "buy car," probable cause has been established. The prosecutor continued, indicating that, "a week later[,]" [the] same activity" was observed. A police officer, sitting in front of Menefee's house,

observed a car stop and the individual inside the car meet with Menefee. When the “buy car” was later stopped, “a dog . . . alert[ed] for the presence of cocaine.”

The prosecutor argued that, if those were the only facts, the prosecution should “win.” However, he indicated that there was more. Menefee “has a prior record for . . . dealing cocaine.” The prosecutor continued, “So now we have more corroboration for the idea that probably there’s cocaine to be found in Mr. Menefee’s house . . . . [¶] On top of that, if that wasn’t enough for some reason we have a confidential informant who started out this investigation by telling the officers, oh, by the way, there’s a guy named Menefee who is selling dope and this is how he does it. He drives a certain car. He lives at a certain location. And sure enough, what the informant tells them is exactly what the officers observe.”

After the trial court refused to allow defense counsel to have access to the sealed portion of the confidential informant’s affidavit, counsel requested that the trial court review the affidavit in camera. The prosecutor agreed that the trial court should review the affidavit in camera and stated: “I think you have to conduct an in-camera hearing with the officer and you have to make findings that[,] based on the redacted information, there’s nothing in there that changes the equation with respect to the motion to quash. [¶] You also have to make findings that there is good reason . . . to keep the information confidential. You’re entitled to inquire of the officer what the information is that’s been removed and why we need to keep it confidential, and make findings that there is—that they’re not just essentially screwing around with things. You need to make those two findings.” Defense counsel then expressed her concern that there was “nothing really

[significant] about the informant, just that the informant [was] confidential and gave some information.” Counsel continued, “I would ask that the court ask the questions . . . that I’d like to submit . . . .”

After defense counsel indicated that the evidence against Menefee had been built on “an unsolid foundation” and she should be given the opportunity to “file a motion to traverse” the warrant, the trial court indicated that it was going to have a brief hearing with Detective Jackson. When defense counsel again asked if she could submit a page of questions, the trial court responded: “We’re going to wait at this point. Let me just review first and we’ll see what we’re doing.”

The trial court, in the presence of Detective Jackson, reviewed the sealed section of the search warrant and determined that nothing in that portion of the document “would change the court’s finding [with regard to] probable cause[.]” The trial court continued, “[I]n fact, [there] is additional information which has assisted the court in that regard. And so the court is at this point not going to grant the motion to quash.” With regard to the confidential informant, the trial court stated: “[T]he identity of the informant is not required to establish the legality of the search pursuant to the warrant . . . [and] the warrant suffices on its face as it is and . . . the sealing of the [identifying] portion was necessary for the safety of the informant and for the continuing investigation.”

Defense counsel continued to argue that she was unable to “test the veracity of the claims made in the search warrant without more information regarding the confidential informant.” She asserted there were “substantial reason[s] to believe that some information provided . . . by the informant [might] be false.” In particular, counsel

referred to the two individuals who, after having had contact with Menefee, were “found not to have drugs” and the fact that testing by a defense expert indicated that some of the materials retrieved from Menefee’s home were “found not to be narcotics.”

The trial court responded that “when it [came] to the probable cause determination . . . , yes, the confidential informant’s information was a factor because it set in motion the observations by the police officers, the police officers’ observations of the meetings of the cars and all of those things.” The court continued: “And then . . . when they stopped the two vehicles, while there was . . . no concrete evidence that . . . the drugs were there, we have the canine alert, the odor of cocaine, and we have the white residue—white powdery substance or the residue that was in the plastic bag. [¶] While it could be on its own consistent with them having obtained the narcotics at some earlier point, . . . that information, coupled with the officers’ observations and, yes, some information provided by the confidential informant[,] is the basis for a valid probable cause in my estimation of the warrant. [¶] . . . [B]ut then the question is, . . . when you come to materiality—when you say it’s a material factor, yes, it is a factor. . . . [I]t’s considered, but is it . . . the sole reason? No. The court . . . believes that there’s sufficient information there for the police officers to have come to the court to seek the warrant.” Relying in part on *People v. Luttenberger* (1990) 50 Cal.3d 1, 22 and *People v. Hobbs* (1994) 7 Cal.4th 948, the trial court denied defense counsel’s request for an in camera hearing. The court, however, qualified its ruling by stating, “Now[,] if . . . something else . . . develops, then I would consider it at that point.”

At proceedings held on May 25, 2010, the trial court noted that a disposition had been reached in Menefee's case. Defense counsel indicated that Menefee had agreed to plead to "counts 2, 3, 4, and 5, for three years of formal probation, time served, and six years in state prison suspended." After Menefee "g[a]ve up [his] right to challenge the sentence with respect to Penal Code section 654 issues," he waived his right to a jury or court trial, his right to confront and cross-examine the witnesses against him, the right to use the subpoena power of the court to call witnesses to testify in his defense and his privilege against self-incrimination. He then pleaded no contest to possession for sale of marijuana (Health & Saf. Code, § 11359), and admitted that a principal was armed with a firearm during the offense (Pen. Code, § 12022, subd. (a)(1)). He pleaded no contest to being a felon in possession of a firearm (Pen. Code, § 12021, subd. (a)(1)), no contest to the unlawful possession of ammunition (Pen. Code, § 12316, subd. (b)(1)), and no contest to receiving stolen property (Pen. Code, § 496, subd. (a)).

The trial court sentenced Menefee to the upper term of three years in prison for his conviction of count 2, the sale of marijuana, then imposed a one-year term for his admission that a principal was armed with a firearm during the offense. For his convictions of possession of a firearm by a felon as alleged in count 3, the unlawful possession of ammunition as alleged in count 4 and receiving stolen property as alleged in count 5, the trial court imposed one-third the mid-term, or eight months for each offense, the terms to run consecutively to each other and those imposed for count 2. In total, the trial court sentenced Menefee to six years in state prison. The trial court then

suspended imposition of sentence and granted Menefee three years of formal felony probation.

Menefee was awarded six days of presentence custody credit consisting of three days actually served and three days of good time/work time. He was ordered to pay a \$200 “victim restitution fund fine per count,” or an \$800 fine (Pen. Code, § 1202.4, subd. (b)),<sup>4</sup> a stayed \$200 probation revocation restitution fine (Pen. Code, § 1202.44), a \$30 court security assessment (Pen. Code, § 1465.8, subd. (a)(1)), a \$50 laboratory analysis fee (Health & Saf. Code, § 11372.5), an \$85 penalty assessment (Pen. Code, § 1464; Gov. Code, § 76000) and a \$30 criminal conviction assessment (Gov. Code, § 70373). Finally, the trial court dismissed the allegations made in count 1 of the information.

Menefee filed a timely notice of appeal on May 26, 2010.

This court appointed counsel to represent Menefee on appeal on August 4, 2010.

### **CONTENTIONS**

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed August 26, 2010, the clerk of this court advised Menefee to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. On October 5, 2010, Menefee filed a document in which he asserted Detective Jackson “gave false information to Judge Candace Beason in order to obtain a warrant for

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<sup>4</sup> Appointed appellate counsel made a motion in the trial court to have the \$800 fine reduced to the mandatory minimum of \$200.

[the search of his] residence.” Menefee indicated an unreliable informant gave to the detective information which, had the detective performed a proper investigation, he would have realized was untrue. Menefee stated: “In order for the police to obtain a warrant they make things up and fabricate stories to meet certain guidelines for the warrant. The judge in my case signed a warrant for my residence inappropriately.”

Menefee’s assertion is without merit. When an affidavit has been sealed, it is the function of the trial court to determine whether a “defendant’s general allegations of material representations or omissions are supported by the public and sealed portions of the search warrant affidavit . . . .” (*People v. Hobbs, supra*, 7 Cal.4th at p. 974.) In order to prevail on such an accusation, the defendant must show that “(1) the affidavit included a false statement made ‘knowingly and intentionally, or with reckless disregard for the truth,’ and (2) ‘the allegedly false statement is necessary to the finding of probable cause.’ ” (*Ibid.*) Here, Menefee’s conclusive arguments have shown neither.

### **REVIEW ON APPEAL**

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

**DISPOSITION**

The judgment is affirmed.

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CROSKEY, J.

We concur:

KLEIN, P. J.

ALDRICH, J.